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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,037	05/23/2001	Peter A. Gottlieb	18133-099	1832

7590 12/19/2001
MINTZ, LEVIN
One Financial Center
Boston, MA 02111

EXAMINER

FLEMING, FRITZ M

ART UNIT	PAPER NUMBER
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2836

DATE MAILED: 12/19/2001

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,037

Applicant(s)

GOTTLIEB ET AL.

Examiner

Fritz M. Fleming

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Fritz M. Fleming
FRITZ FLEMING
PRIMARY EXAMINER
GROUP 2100

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

First of all, claim 1 sets forth "one or more battery packs coupled together in parallel", which poses an interesting dilemma.....how is "one battery pack" "connected in parallel"? The claim language clearly indicates that one battery pack is possible, yet elementary electrical engineering studies make it quite clear that at least two items are needed for a proper "parallel connection". Thus the questions are...how many packs do applicants intend to claim....and how are the pack(s) to be connected when only one is present? This makes the scope of the claims very difficult to ascertain and creates numerous antecedent basis problems. For example, claim 6 assumes that claim 1 set forth "an array of battery packs". The same applies for claim 9. Claims 10-13 then seem to assume that there is only one pack. The remaining claims also exhibit problems when it comes to the number of pack(s) claimed. Applicants need to clearly revisit the claims and draft them in an understandable manner so as to allow for quality examination based. Also, claiming standards such as RJ-22 is vague and indefinite as they may change over time. As far as the remainder of the office action is concerned, the rejections are made as best as the claims allow.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No.

6,274,950 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims seem to claim the same material in a broader sense as best as the claims can be understood.

Claim Rejections - 35 USC § 103

5. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stich et al. '533 (A) in view of Reich et al. (B) and Simonsen (C) and Masson (D).

A teaches the overall concept of a single battery 47 that is monitored via 61, this information being passed on to the UPS controller 66 which is connected to AC in via the line monitor 53/62 and to the contactor 34 and static switch 35 so as to control the inverter 46 when the AC drops out. Note that the battery is monitored and numerous alarms are generated.

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B teaches the desirability to perform in depth analysis of the "at least one battery" in a UPS. The parameters are stored, measured and communicated. Note the use of RS232C. Amongst the parameters measured are battery string voltage, battery shunt current, and temperature. "Events" are flagged and communicated. See for example Table 1 and Table 2 and the use of an LCD display. Note the use of RJ-11 phone connection.

C teaches that standby batteries often come in parallel strings and it is desirable to monitor these batteries for float voltage, time of battery discharges, total accumulated battery discharge power, temperature and recharge current and voltage. Note that Figures 8-10 show outputs. Figure 11 shows a single processor based monitor for parallel strings, but Figure 12 shows plural monitors (i.e. one for each parallel branch) with the teaching that this is more accurate (see column 9). Finally note that column 5 contemplates the use of a phone modem to transmit the instrument data.

Finally, D teaches parallel-connected battery strings that are monitored for voltage, current and temperature so as to ensure proper backup operations.

Thus it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify A per the teachings of B-D for the purpose of more accurate battery string monitoring so as to ensure proper backup operations when the input AC fails.

Conclusion

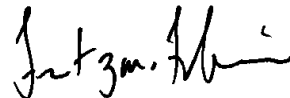
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The remainder of the art shows various backup schemes.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M. Fleming whose telephone number is 703.308.1483. The examiner can normally be reached on M-F 0630-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josie Ballato can be reached on 703.308.0269. The fax phone numbers for the organization where this application or proceeding is assigned are 703.308.7722 for regular communications and 703.308.7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1782.



Fritz M. Fleming
Primary Patent Examiner
Art Unit 2836

ff
December 16, 2001